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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

AMADO ESCOBEDO, JR. and
DOROTEA GONZALEZ
Defendants.

CASE NO. 1:21-CR-00222 ADA-BAM

STIPULATION CONTINUING STATUS
CONFERENCE AND REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER

DATE: March 22, 2023

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

This case is set for a status conference on March 22, 2023 in front of the Honorable Barbara A. McAuliffe, U.S. Magistrate Court Judge. The parties stipulate and request to continue the status conference to May 10, 2023 at 1:00 p.m. This case involves complex issues and intersecting state and federal cases, and counsel need additional time based in part on state timing, and also to review discovery, conduct additional investigation, and engage in additional discussions with the government before doing so.

On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the courthouse in June 2021, recognized the continued public health emergency, continued to authorize video or teleconference court appearances in various cases, and noted the court's continued ability under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652, which "authorized the use of videoconference and teleconference technology in certain criminal

proceedings under the in the Eastern District of California.” This and previous General Orders highlight and were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following

case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants’ counsel of record, hereby stipulate as follows:

1. The parties need additional time to further investigate/explore matters related to resolving the case or setting a trial date.

2. By this stipulation, defendants now move to continue the status conference, and to exclude time from March 22, 2023 to May 10, 2023 under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports, and related documents in electronic form. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying. The parties have made progress in investigating the foundation for and discussing options to move the case forward to pleas or a trial. Defense would like additional time to investigate the options and foundations for the options further.

b) In the Court’s last minute order, the Court directed that “in any request for a continuance, the parties shall explain when they will be ready to set a trial date. The stipulation must be filed no later than noon on Wednesday, March 15, 2023 . . . “.

c) The parties agree that one week prior to the next status conference, the parties will stipulate to vacate the status conference and either request a hearing for a change of plea or a date on which to start a trial.

d) The government does not object to the continuance.

e) In addition to the public health concerns cited by the General Orders and

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
2 ends-of-justice delay is particularly apt in this case because:

- 3 • Defendant's ability to prepare for trial or a plea has been inhibited by the public
4 health emergency;
- 5 • Defendant needs additional time to review discovery, and conduct additional
6 investigation; and
- 7 • The parties need additional time to investigate/explore matters related to
8 proceeding via plea or trial.
9

10 f) Based on the above-stated findings, the ends of justice served by continuing the
11 case as requested outweigh the interest of the public and the defendant in a trial within the
12 original date prescribed by the Speedy Trial Act.

13 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
14 et seq., within which trial must commence, the time period of March 22, 2023 to May 10, 2023,
15 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
16 because it results from a continuance granted by the Court at defendant's request on the basis of
17 the Court's finding that the ends of justice served by taking such action outweigh the best interest
18 of the public and the defendant in a speedy trial.

19 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
20 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
21 must commence.

22 IT IS SO STIPULATED.
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1 Dated: March 15, 2023

PHILLIP A. TALBERT
United States Attorney

2
3 /s/ KIMBERLY A. SANCHEZ
KIMBERLY A. SANCHEZ
Assistant United States Attorney

4
5 Dated: March 15, 2023

/s/ MONICA BERMUDEZ
MONICA BERMUDEZ
Counsel for Defendant

6
7 Dated: March 15, 2023

/s/ PETER JONES
PETER JONES
Counsel for Defendant
Doroteo Gonzalez

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11 **ORDER**

12 IT IS SO ORDERED that the status conference is continued from March 22, 2023, to **May 10,**
13 **2023 at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to 18
14 U.S.C. § 3161(h)(7)(A), B(iv). If the parties do not resolve the case in advance of the next status
15 conference, they shall be prepared to set a trial date at the status conference hearing.

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17 IT IS SO ORDERED.

18 Dated: **March 16, 2023**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE